

cbl. 12, lines 55-63; col. 15, lines 1-5; col. 18, lines 65-67; and col. 21, lines 50-53. Zhang et al., thus, fails to disclose or suggest the liquid reservoir of the present invention. Accordingly, Applicants respectfully request that the above rejection under 35 USC 102(e) be withdrawn.


### **Rejection Under 35 USC 103**

Claims 1, 9, and 12 were rejected under 35 USC 103(a) as being unpatentable over Zhang et al. See Page 4-5 of the Office Action. Applicants respectfully disagree. As discussed above, Zhang et al. fails to disclose a device wherein the water is contained in a liquid reservoir separate from the heating element. As water is already exposed to the oxidizable material in the device of Zhang et al., the exothermic reaction is initiated by exposing oxygen to this aqueous mixture. See col. 7, line 48 through col. 8, line 2 of Zhang et al. In contrast, the oxidizable material of the present invention is not pre-mixed with water. Thus, the exothermic reaction within the device of the present invention cannot be initiated until the liquid reservoir containing water is ruptured, and water from the ruptured liquid reservoir comes into contact with the oxidizable material. Such a device is not disclosed, nor suggested by Zhang et al. Accordingly, Applicants respectfully request that the above rejection under 35 USC 103(a) be withdrawn.

Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached page(s) is/are captioned "Version with markings to show changes made".

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

**In the Claims:**

Please amend Claim 1 as follows:

1. (Amended) An exothermic device for topically delivering an active agent, said device comprising:
- (a) a liquid reservoir, said reservoir is a capsule comprising water;
  - (b) a heating element, said heating element comprising an oxidizable material and where said heating element is in communication with said liquid reservoir;
  - (c) an oxygen-permeable outer-layer, wherein said oxygen-permeable layer is in communication with said heating element, permits oxygen from the environment to contact said heating element, and substantially inhibits the permeation of water from the heating element into the environment;
  - (e) an active agent; and
  - (e) a water-impermeable layer, wherein said water-impermeable layer separates said heating element and said active agent;
- wherein upon the rupturing of said liquid reservoir, said water contacts said heating ~~heating~~ element and said oxygen to create ~~and~~ exothermic reaction.